



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/00CJ/LDC/2022/0050**

Property : **Apartments 1 to 68, Rialto, Melbourne Street,
Newcastle Upon Tyne NE1 2JR**

Applicant : **Rialto RTM Company Limited**

Representative : **LMP Law Limited**

Respondents : **Long Residential Leaseholders at the Property
(see Annex)**

Type of Application : **Landlord & Tenant Act 1985 – Section 20ZA**

Tribunal Member : **Judge L Bennett**

Date of determination : **24 April 2023**

Date of Decision : **9 May 2023**

DECISION

Application

1. Rialto RTM Company Limited applies to the Tribunal under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) for dispensation from the consultation requirements of Section 20 of the Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987) in respect of fire safety works (the Works) at Apartments 1 to 68, Rialto, Melbourne Street, Newcastle Upon Tyne NE1 2JR (the Property).
2. The Respondents are the Long Residential Leaseholders at the Property and listed at the Annex to this decision.

Grounds and Submissions

3. The application was received by the Tribunal on 16 September 2022.
4. The Applicant is the RTM company that has taken over the management functions named in the leases.
5. The Tribunal did not carry out an inspection but understands that the Property is a new build apartment scheme built c2005 by Persimmon Homes, comprising 68 residential apartments and 1 commercial unit.
6. On 25 January 2023, a Tribunal Legal Officer made directions requiring the service of documents by the Applicant upon each of the Respondents. The directions provided that in the absence of a request for a hearing the application would be determined upon the parties' written submissions.
7. The Applicant has provided a statement of case explaining why the application was made to the Tribunal together with supporting documents.
8. The Applicant will be undertaking major works namely: remove and replace any identified area of the external wall system that are combustible, together with associated recommendations based on PAS9980. The scopes of these works are outlined and highlighted at **Exhibit Ria4** of the Applicant's bundle. The works are urgently needed due to fire safety concerns and are due to commence in the first quarter of 2023.
9. The exact cost of the works is not yet known but are thought to be in the region of £1.5 to £2 million. The works are likely to be funded by the Government Remediation Fund (see **Exhibit Ria5** of the Applicant's bundle). In addition, the Applicant has also received a letter from Persimmon PLC dated 13 July 2022, confirming that they will fund all identified and relevant fire related defects and consultant costs. A copy of this letter can be found at **Exhibit Ria6** of the Applicant's bundle.

The application for dispensation is therefore a precautionary application. In the unlikely event that the Applicant is unable to recover the funds from the above sources or other unidentified works are needed, the Applicant should not have to wait for a full consultation exercise to be carried out as this will be a detriment to the Leaseholders. The Applicant submits that no prejudice would be caused to the Leaseholders and it would be reasonable to dispense with the consultation

requirements. The Applicant also assures the Tribunal that no funds will be requested from the Leaseholders that would contravene the Building Safety Act 2022.

10. The Tribunal did not receive any submissions from a Respondent Leaseholder. Neither the Applicant nor a Respondent requested a hearing.
11. The Tribunal therefore convened without the parties to make its determination on 24 April 2023.

Law

12. Section 18 of the Act defines “service charge” and “relevant costs”.
13. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
14. Section 20 of the Act states:-
“Limitation of service charges: consultation requirements
Where this Section applies to any qualifying works..... the relevant contributions of tenants are limited..... Unless the consultation requirements have either:-
 - a. complied with in relation to the works or
 - b. dispensed with in relation to the works by a tribunal.This Section applies to qualifying works, if relevant costs incurred on carrying out the works exceed an appropriate amount”.
15. “The appropriate amount” is defined by regulation 6 of The Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations) as “..... an amount which results in the relevant contribution of any tenant being more than £250.00.”
16. Section 20ZA(1) of the Act states:-
"Where an application is made to a Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

Tribunal’s Conclusions with Reasons

17. I have determined this matter following a consideration of the Applicant’s case but without holding a hearing. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed). In this case, the Applicant has given its consent and the Tribunal has not heard from a Respondent in response to the application. Moreover, having reviewed the case papers, I am satisfied that this matter is indeed suitable to be determined without a hearing. Determining this matter does not require me to decide disputed questions of fact.
18. It is not necessary to consider at this stage the extent of any service charges that may result from the works payable under the terms of the Respondents’ leases. If and when such is demanded, and if disputed, it may properly be the subject of a future application to the Tribunal.

19. Having considered the submission made by the Applicant I accept that this application is purely precautionary. However, the works are clearly of an urgent nature. A consultation exercise would add considerable delay and be detrimental to the safety of the Leaseholders. The Applicant has notified Leaseholders about the works and of the application to the Tribunal.
20. In **Daejan Investments Ltd v Benson [2013] UKSC 14** it was determined that a Tribunal, when considering whether to grant dispensation, should consider whether the tenants would be prejudiced by any failure to comply with the Consultation Requirements. Balancing the need for urgent action against dispensing with statutory requirements devised to protect service charge paying Leaseholders, I conclude that the urgency outweighs any identified prejudice. Dispensation from consultation requirements does not imply that any resulting service charge is reasonable.

Order

21. The Applicant is dispensed from complying with the consultation requirements in respect of the works specified in the application.

Laurence J Bennett
Tribunal Judge
24 April 2023

Annex - List of Respondent Leaseholders

Leaseholder
Mr K Robinson
Mr A Ho
Ms C Yim
Mr & Mrs Warne
Ms J Hopkins
Iprosperity Ltd
Mr C Surridge
Mr M Hunt
Mr P Fido
Mr S Coplestone
Mr K Tan
Mr M Cotton
Kai Sin & Wan Ye Chai
Mr & Mrs Foreman
Ramalingam Elangovan
Paul Cooper & Marie Bateman
Endian Zhang
Mr E Bass
Yiwen Zhang
Mr W Boucher
Mr & Mrs Bhambra
Xing Wang
Alison Service
Bell Property Holdings
Mr & Mrs Anderson
Adderstone Developments Ltd
Ms J Mackie
Mr M Brooks
Mr P Raut
Ms L Hong
Mr M Stewart
Mr & Mrs Taylor
Mr & Mrs Facer
Mr T Kwan
Liz Rennex
Valerie Ferguson
David & Yvonne Foreman
AJC Global Solutions Ltd
Mr J Crabb
Mr & Mrs Robb
Mr A Jacobs
Mahendran Bakeirathan
Ms P O'Henly
Mr D Bentley
Mrs A Alawad
Ms W Lee
Saulire LLP
Chun Tang Lau & Tzs Ting

Edan Chan
Mr A Joshi
Dr I Sanya
Mr & Mrs Teanby